



Gray Davis  
GOVERNOR



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# **State of California**

## **A GUIDE TO THE LAFCO PROCESS FOR INCORPORATIONS**

### **APPENDIX A**

### **Incorporation Primer**

**Governor's Office of Planning and Research**

## I. INTRODUCTION

The purpose of this document is to provide basic information and practical advice on the entire incorporation process—starting with informal discussion among residents regarding their community’s future to the first months of a newly incorporated city’s life. It is hoped this will help both citizens and Local Agency Formation Commission (LAFCO) staff unfamiliar with incorporations to effectively and efficiently participate in the process.

### **FRIEND OR FOE?**

Incorporation proposals are often motivated by dissatisfaction with status quo and this leads to a tendency to view the incorporation process as an adversarial one. LAFCO should not be viewed as an antagonist but as intermediary who is required to identify problems and issues and who tries to resolve them in an equitable manner.

This primer is **NOT** intended to be an all-inclusive and definitive guide to the requirements for incorporations. The Governor’s Office of Planning and Research (OPR) has prepared incorporation guidelines which follow the legal requirements of the Cortese-Knox-Hertzberg Act of 2000. In addition, many individual LAFCOs have adopted policies and procedures augmenting the minimum legal requirements. It is critical that any individual, group, agency or community interested in incorporation carefully review the OPR Incorporation Guidelines as

well as meet with your LAFCO staff.

## II. BEFORE YOU START

### **1. Be Realistic**

Incorporations usually start with a group of residents forming a committee to explore the possible incorporation of their community. An incorporation committee defines and articulates incorporation goals, raises funds, collects signatures, assembles application materials, works with LAFCO staff and consultants, testifies at hearings and negotiates changes in the proposal. While each incorporation is unique, a committee of interested local residents is typically the impetus for incorporation.

For any incorporation to succeed, it must also have widespread community support since the voters must approve all successful incorporations. Therefore, ensuring that the residents are well informed about the incorporation is critical during the incorporation process. Since incorporation is often controversial, it is recommended that the incorporation committee meet with people living in the incorporation area and in adjoining communities which may be directly affected by the proposal. Fund raising is another crucial task that the community group needs to be prepared to do. Incorporations can be expensive; it is not unusual for an incorporation to cost more than \$100,000.

## 2. Why Incorporate?

Incorporation shifts local government responsibility for an unincorporated area under the jurisdiction of a county board of supervisors to a newly established city council. The reasons for incorporation efforts may vary and can include, but are not limited to, the following:

### WHO PROVIDES WHAT SERVICES AFTER INCORPORATION?

#### Services Which A New City May Assume

- AA Law enforcement
- AA Fire protection and paramedics (some cases)
- AA Water and sewer (some cases)
- AA Planning (land use, environmental review, zoning buildings inspection, etc.)
- AA Public works (streets, engineering, traffic signals, streetlights, drainage, etc.)
- AA Local parks and recreation
- AA Libraries (in some cases)
- AA Animal control

#### Countywide Services Continued to a New City

- AA Social services (welfare, child protective services, etc.)
- AA Health services
- AA Criminal justice (courts, prosecution, jails, probation, etc.)
- AA Regional parks
- AA Elections and voters services
- AA General government (assessor, treasurer, recorder, tax collector, etc.)

■ **SERVICES:** Incorporations can be proposed to improve

local public services. Cities can provide extensive services but are also required to fund their share of the cost to provide countywide services through a process named “revenue neutrality” which is explained in following sections.

- **REVENUES:** Incorporation may be proposed to capture increased revenues to support local services.
- **LOCAL CONTROL:** An incorporation may be proposed to give a community more local control over land use, growth, planning policy and other governmental activities.
- **REPRESENTATION:** Incorporations may also be proposed to create a politically accountable governing body (a city council) in a limited geographic area. Some incorporations are proposed because residents feel that a city council may be more accessible, more visible and responsive to the needs of their particular community than the county governing board.

#### Municipal Revenues

Cities can use a variety of revenue. A good source of information about the types of revenues available to cities is the California State Controller’s Annual Cities report which is available online. Another source is the League of California Cities library which has more than 100 city budgets.

## 3. Look at Alternatives

One characteristic that most unincorporated communities face is that they have the same challenges that cities face—changes in the character of their community, housing/jobs balance, provision of services, increased traffic and growth. Some communities see incorporation as a means to help address their problems, but are not aware that there may be other alternatives to do this. It is strongly encouraged that any community investigating incorporation explore a range of alternatives with their fellow residents,

elected representatives, LAFCO and county officials before embarking on an incorporation effort.

## 4. Consult with LAFCO

### What is a Logical Incorporation Boundary?

- Recognizes existing jurisdictional boundaries and spheres of influence (SO Is) of other agencies.
- Is realistic in its recognition of political opportunities and constraints.
- Includes a variety of land uses for a balance community.
- Considers topography, geography and historic boundaries.
- Is simple – parcels should not be split by city boundaries.
- Does not create islands which are unincorporated areas surrounded by incorporated territory.
- Recognizes communities of interest or areas which may have financial, geographic or other various links to the incorporation area.
- Is consistent with the stated goals of incorporation.

Of all the actions incorporation proponents can take which will help to ensure a successful incorporation process, early (and frequent) consultation with LAFCO is the most important. LAFCO staff can help the incorporation proponents avoid the most common pitfalls. It is strongly recommended that proponents develop the incorporation boundaries with LAFCO staff early in the process—even before deciding to move forward with a formal incorporation application. The inclusion (or exclusion) of territory has a profound impact on the incorporation proposal and the preparation of the comprehensive fiscal analysis (CFA).

## Feasibility Review

### WARNING!

An initial feasibility review is NOT a comprehensive fiscal analysis (CFA). It is only an educational tool. Use of the initial feasibility review as a CFA may result in inadequate financial information, longer processing times and more expense

## 5. But Can It Fly? An Initial

To determine if incorporation is a potentially feasible option, proponents should consider performing an initial analysis of the proposed incorporation. Some communities have found that a preliminary assessment of the potential to incorporate has been valuable. This initial feasibility review is designed to help community groups conduct a quick appraisal of the potential for incorporation. Many incorporation groups focus on the fiscal impacts of incorporation—does the community have the financial resources to support a municipality? However, there are other issues which must also be

addressed which would help an community determine if incorporation is right for them.

At a minimum, any community which is considering incorporation should be able to answer the following questions (taken from Institute of Governmental Affairs booklet “Choices for the Unincorporated Community”):

- What is the problem, if any, driving the desire for change in the existing governmental structure? Can the problem be addressed by other, more efficient means?
- What is the role of the County government in the community? Is the county willing or able to address the identified problems?
- What is the community's relationship to other adjacent communities?
- What would the proposed boundaries look like and how would that affect other agencies and communities?
- What is the past history of local efforts to incorporate?
- How is the community changing?

#### **WHY MAKE IT SO HARD?**

Petitions drives require months of planning, coordination and fundraising. Most incorporations are volunteer efforts and it is often difficult for volunteer groups to maintain a sustained level of commitment.

Some proponents believe this is an indication of a bias against grass-roots incorporation drives. However, the existing laws set a high threshold for the creation of a city because incorporation creates permanent and far-reaching responsibilities.

- What is the community's capacity for self-governance?
- How are services currently provided and how would they change?
- Who is likely to benefit from a change and who is likely to lose?

Incorporations also have to be financially feasible. While this is often seen as the primary test for incorporation, it is only one of many standards of review LAFCO will use.

## **6. ADDITIONAL INFORMATION ON THE INITIAL FISCAL REVIEW**

The primary issue for most incorporations is the fiscal feasibility of the proposed new city and the law requires that a Comprehensive Fiscal Analysis (CFA) be prepared. Determining the fiscal feasibility of an incorporation through preparation of the CFA is expensive and the cost is usually borne by the incorporation proponents. Prior to proceeding through the LAFCO initiation and application process, it is suggested that incorporation proponents may want to conduct an initial fiscal feasibility review.

The OPR Incorporation Guidelines have detailed information on the preparation of a CFA, sources of revenues, examples of financial calculations and a one-year fiscal feasibility spreadsheet to help incorporation proponents determine if a more detailed CFA is warranted. It is recommended that any community or group considering incorporation obtain a copy of the OPR Incorporation Guidelines.

### III. MAIN STEPS IN THE INCORPORATION PROCESS

The procedure for the incorporation of an unincorporated community in the State of California can take a year or more, involves extensive data gathering and analysis, and can cost upwards of \$100,000. The purpose of the process is to ensure that any proposed incorporation is economically feasible, in the best interests of the community and environmentally and logically sound. The procedures for incorporation should be followed carefully to avoid long delays and to reduce the risk of potential litigation.

The processing of an incorporation proposal can be divided into several separate stages. These are:

1. Initiating the incorporation process;
2. Application to LAFCO;
3. LAFCO staff review;
4. LAFCO Commission hearing;
5. Election and the first year;

#### 1. Initiating the Incorporation Process

Incorporation can be initiated in one of three ways--by resolution of a public agency, by petition of registered voters or by petition of landowners. However, a notice of the proponents' intent to circulate a petition or adopt a resolution must first be filed with LAFCO. There are strict, legal time limits for gathering signatures. Proponents and LAFCO should use the "Notice of Intent" filing as an opportunity to review the petition and schedule to ensure legal conformance.

##### **FIRST THINGS FIRST!**

It is recommended that the incorporation boundaries be developed with LAFCO prior to submitting an application and that the CFA be started after submitting the application

Once enough signatures are collected, the petition is submitted to LAFCO and must be verified by the appropriate agency. If there are irregularities with the signatures on the petition, some signatures may be disqualified which may mean that additional signature must be gathered.

#### 2. Application to LAFCO

Once the petition is verified, proponents must also prepare and submit a complete application to LAFCO. The application must include:

- A map and legal description of the boundaries of the proposed incorporation area;
- Justification for the proposal;

##### **IS THERE BIAS AGAINST "GRASSROOTS" INCORPORATIONS?**

Some see the lengthy and expensive incorporation process as a barrier to self-governance. But the law sets a high threshold for the creation of a new city because it carries permanent and far-reaching responsibilities. LAFCO must ensure that the city has the finances and community support necessary for the long-term.

##### **COLLECT MORE THAN YOU NEED**

In collecting petitions incorporation proponents should plan on collecting at least 10% to 15% more signatures than the minimum requirement to compensate for invalid signatures.

- A plan for the transfer/provision of public services; and
- Other information as requested by the LAFCO.

### 3. LAFCO Staff Review

The LAFCO staff reviews all the application materials submitted, conducts its own analyses, performs the environmental review, determines the property tax transfer and revenue neutrality conditions, solicits comments and produces a final report containing a recommendation to the LAFCO board. At this time the preparation of the comprehensive fiscal analysis (CFA) is also usually begun. Sometimes the CFA is paid for and arranged by the proponents. In other cases, the LAFCO arranges for the preparation of the CFA.

The CFA is crucial to the final staff recommendation. It provides the financial information LAFCO needs to ensure that the proposed new city is fiscally stable, self-sufficient and the reallocation of revenues among affected agencies is equitable. The preparation of a CFA is complex, must satisfy legal requirements and should not be started without consulting with LAFCO.

#### WHY WASN'T I NOTIFIED?

LAFCO is NOT required to mail a notice to all residents living within the incorporation boundaries. Residents may request, in writing, to be placed on the appropriate mailing list for notices of incorporation hearings and/or distribution of incorporation reports.

The LAFCO Executive Officer can also request the submittal of additional information/studies or make changes in the proposal. The LAFCO staff review can take as long as twelve (12) months. Incorporation proponents are required to pay fees and costs. Some LAFCOs require that proponents pay 100 percent of all staff costs. Other LAFCOs underwrite a portion of the costs and charge the staff time to the general administrative budget of the agency. Due to the differences in how LAFCOs set fees and budget their own administration costs, the fees and costs associated with incorporations can range from \$4,000 to \$100,000.

LAFCO staff works cooperatively with all interested parties to ensure that a thorough, complete and accurate proposal is developed for the LAFCO Commission's consideration. When the proposed incorporation is ready for a public hearing, the LAFCO Executive Officer will issue a certificate of filing, schedule the item for a public hearing and prepare a report with a recommendation. The report is a public document and will be made available to the proponents and other interested parties at least five days before the public hearing.

#### REVENUE NEUTRALITY

LAFCO cannot approve a proposal that includes incorporation unless it finds that the revenues currently received by the county equal expenditures. Consult the OPR Incorporation Guidelines for more information on revenue neutrality.

### 4. LAFCO Commission Hearing

A public hearing is scheduled within 30 days after the LAFCO Executive Officer issues a Certificate of Filing. At the public hearing, the LAFCO Commission hears the staff report and considers testimony of interested parties both supporting and opposing the incorporation. The LAFCO Commission may continue the hearing to a



future date or close the public hearing and act on the proposal.

The LAFCO Commission has the authority to approve, deny or modify/approve the incorporation proposal. If the LAFCO Commission approves the proposed incorporation, it must make certain findings and adopt terms and conditions which may include, but are not limited to:

- Final boundaries or the incorporated areas;
- Revenue neutrality mitigation payments;
- An effective date for the incorporation; and
- Other term and conditions.

Any person or agency may file a “Request for Reconsideration” with the LAFCO within thirty days of approval. Fees must accompany the request.

If the LAFCO Commission denies the proposed incorporation, no similar application can be filed for at least one year unless the LAFCO Commission waives that prohibition.

### **Affordable Housing and a New City**

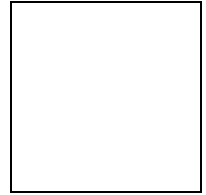
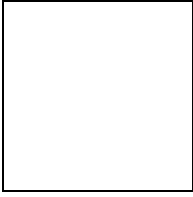
State law recognizes the vital role local governments play in the affordability of housing. Every city council in California is required to adopt a comprehensive, long-term plan which provides for, and does not unduly constrain, affordable housing development. Housing element law also requires the Department of Housing and Community Development (HCD) review local housing elements for compliance with State law.

## **5. Election and First Year**

Once approved by the LAFCO Commission, the incorporation proposal is placed on the ballot for voter approval and a simple majority of those voting is required to approve the incorporation.

After the effective date of the incorporation, LAFCO’s work is complete. However, the work of the new city has just begun. It is recommended that all new cities contact the League of California Cities which offers several publications, classes and workshops for new city councils.





# **State of California**

## **A GUIDE TO THE LAFCO PROCESS FOR INCORPORATIONS**

### **APPENDIX B**

### **Sample Forms**

**Governor's Office of Planning and Research**

PETITION FOR PROCEEDINGS PURSUANT TO THE CORTESE-KNOX-  
HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT OF 2000

**PART I: NOTICE OF INTENT TO CIRCULATE PETITION**

**Proponents are required to file a NOTICE OF INTENT TO CIRCULATE PETITION with the Executive Officer of the Local Agency Formation Commission before a petition to initiate a change of organization or reorganization can be circulated (Govt. Code § 56700.4).**

1. Notice is hereby given to circulate a petition proposing to

\_\_\_\_\_

\_\_\_\_\_

2. The reason(s) for the proposal are:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Proponent's Name (print)

\_\_\_\_\_  
Signature of proponent or representative

\_\_\_\_\_  
Proponent's Address

\_\_\_\_\_  
City, State, Zip

Pursuant to Section 56700.4 of the California Government Code, this NOTICE OF INTENT TO CIRCULATE PETITION was filed with me on

\_\_\_\_\_

Date

\_\_\_\_\_  
Officer

\_\_\_\_\_,

Executive

## **PART II: DISCLOSURE REQUIREMENTS**

The Political Reform Act prohibits a person appointed to the Local Agency Formation Commission from soliciting or accepting campaign contributions or more than \$250 within the preceding 12 months from parties, participants, or their agents while a proceeding is pending before LAFCO and for three months following the decision. LAFCO commissioners who receive such contributions are required to disqualify themselves from participating in the proceedings. Both commissioners and contributors who are parties to the proceeding are required to disclose the contributions received or made. Names of current LAFCO commissioners and LAFCO disclosure forms are available at \_\_\_\_\_ or by calling \_\_\_\_\_.

Expenditures for political purposes related to a change of organization or reorganization proposal which has been submitted to a commission, and contributions in support of, or in opposition to such measures, shall be disclosed and reported to the same extent and subject to the same requirements as provided for local initiative measures to be presented to the electorate [Govt. Code § 56700.4(a)].

# **PETITION FOR THE INCORPORATION OF THE CITY OF-----, CALIFORNIA**

We, the undersigned registered voters, do hereby petition the Local Agency Formation Commission pursuant to the Cortese/Knox/Hertzberg Local Government Reorganization Act of 2000 commencing Section 56000 of the California Government Code, for the Incorporation of the City of -----, California within the boundaries of the community of -----, more particularly described on the Legal Description and Map attached hereto as Exhibit "A".

The reasons for the proposed incorporation are: 1) -----; 2) -----; and 3) to -----.

The Chief Petitioners for this proposal are: (name), ---(address)-----, (name), ---(address)-----, and (name), ---(address)-----.

We hereby request that the -----County Local Agency Formation Commission conduct these proceedings for the Incorporation of the City of ----- pursuant to Govt. Code Section 56000 et. seq. and in those proceedings provide for the City Council appointment of a City Manager, City Clerk, and City Treasurer.

The voter must sign his name, residence, and date of signing in his own handwriting. RESIDENCE means a number and a street address or description sufficient for the Registrar of Voters to locate property on a map. Post office box numbers or route numbers cannot be used and will not be accepted.

|            |                   |      |          |
|------------|-------------------|------|----------|
| Sign Name  | Residence Address | Date | Precinct |
| Print Name |                   |      |          |
|            |                   |      |          |
| Sign Name  | Residence Address | Date | Precinct |
| Print Name |                   |      |          |
|            |                   |      |          |
| Sign Name  | Residence Address | Date | Precinct |
| Print Name |                   |      |          |
|            |                   |      |          |
| Sign Name  | Residence Address | Date | Precinct |
| Print Name |                   |      |          |
|            |                   |      |          |
| Sign Name  | Residence Address | Date | Precinct |
| Print Name |                   |      |          |
|            |                   |      |          |
| Sign Name  | Residence Address | Date | Precinct |
| Print Name |                   |      |          |
|            |                   |      |          |

## AFFIDAVIT OF CIRCULATOR

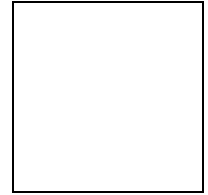
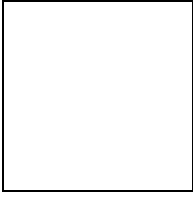
I,  
\_\_\_\_\_  
residing at \_\_\_\_\_  
\_\_\_\_\_  
Precinct \_\_\_\_\_ Number \_\_\_\_\_

\_\_\_\_\_ under penalty of perjury, state that between the dates of \_\_\_\_\_  
and \_\_\_\_\_

\_\_\_\_\_  
I  
circulated the attached or foregoing petition subsequent to such circulation; and that no  
pages have been added thereto.

I circulated the petition and saw all signatures appended thereto, and that to the  
best of my knowledge and belief, they are the signatures of persons whose names they  
purport to be.

DATED: \_\_\_\_\_ SIGNATURE \_\_\_\_\_ OF  
CIRCULATOR \_\_\_\_\_



# **State of California**

## **A GUIDE TO THE LAFCO PROCESS FOR INCORPORATIONS**

### **APPENDIX C**

#### **Initial Fiscal Feasibility Spreadsheet**

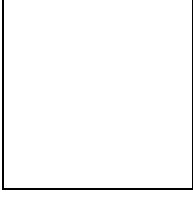
**Governor's Office of Planning and Research**

# INITIAL FISCAL FEASIBILITY ANALYSIS

| <b>GENERAL FUND</b>              |   |          |
|----------------------------------|---|----------|
| <b>General Fund Revenues</b>     |   |          |
|                                  | Property Tax                                    | 0        |
|                                  | Property Transfer Tax                           | 0        |
|                                  | Sales and Use Tax                               | 0        |
|                                  | Transient Occupancy Tax                         | 0        |
|                                  | Motor Vehicle In-Lieu                           | 0        |
|                                  | Franchise Fees                                  | 0        |
|                                  | Fines & Forfeitures                             | 0        |
|                                  | <b>Total Revenues</b>                           | <b>0</b> |
| <b>General Fund Expenditures</b> |   |          |
|                                  | City Council                                    | 0        |
|                                  | City Manager                                    | 0        |
|                                  | City Clerk                                      | 0        |
|                                  | City Attorney                                   | 0        |
|                                  | Finance   | 0        |
|                                  | Community Development                           | 0        |
|                                  | Law Enforcement                                 | 0        |
|                                  | Fire Protection                                 | 0        |
|                                  | Animal Control (Net Cost)                       | 0        |
|                                  | Parks and Recreation                            | 0        |
|                                  | Non-Departmental                                | 0        |
|                                  | Subtotal  | 0        |
|                                  | <u>Contingency (@ 5%)</u>                       | 0        |
|                                  | <b>Total Expenditures</b>                       | <b>0</b> |
|                                  | <b>General Fund Operating Surplus (Deficit)</b> | <b>0</b> |



| ROAD FUND                        |                               |          |
|----------------------------------|-------------------------------|----------|
| <b>Road Fund Revenues</b>        |                               |          |
|                                  | Gas Taxes                     | 0        |
|                                  | Transportation Related        | 0        |
|                                  | Sales Tax                     |          |
|                                  | <b>Total Revenues</b>         | <b>0</b> |
| <b>General Fund Expenditures</b> |                               |          |
|                                  | Street Maintenance            | 0        |
|                                  | <u>Contingency (@ 5%)</u>     | 0        |
|                                  | <b>Total Expenditures</b>     | <b>0</b> |
|                                  | <b>General Fund Operating</b> | <b>0</b> |
|                                  | <b>Surplus (Deficit)</b>      |          |



# **State of California**

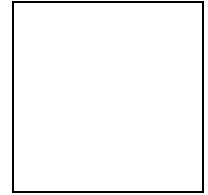
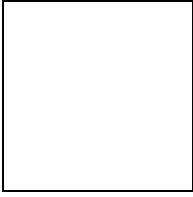
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### **APPENDIX D**

#### **Processing of Incorporation Petitions**

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### **APPENDIX E**

#### **Incorporation Flow Chart**

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